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In The

Supreme Court of the United States

JOHN GALE, in his official capacity as Secretary of State of Nebraska, and JON BRUNING, in his official capacity as Attorney General of Nebraska,

Petitioners,

v.

JIM JONES, TERRENCE M. SCHUMACHER, SHAD DAHLGREN, HAROLD G. RICKERTSEN, TODD EHLER, and ROBERT E. BECK III,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF AMICUS CURIAE OF THE STATES OF MINNESOTA, IOWA, MISSOURI AND NORTH DAKOTA AND THE COMMONWEALTH OF PUERTO RICO IN SUPPORT OF PETITIONERS

LORI SWANSON
Attorney General
State of Minnesota

THOMAS K. OVERTON
Assistant Attorney General
Counsel of Record

445 Minnesota Street, Suite 900
St. Paul, MN 55101-2127
(651) 296-0985

Attorneys for State of Minnesota

[Additional Counsel Listed On Inside Cover]

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TOM MILLER
Attorney General of Iowa
Hoover State Office Building
1305 Walnut Street
Des Moines, IA 50319
(515) 281-5191

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri
Supreme Court Building
207 West High Street
Jefferson City, MO 65101
(573) 751-3321

WAYNE STENEHJEM
Attorney General of North Dakota
600 E. Boulevard Avenue
Bismarck, ND 58505-0040
(701) 328-2210

ROBERTO J. SÁNCHEZ-RAMOS
Secretary of Justice
Commonwealth of Puerto Rico

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INTEREST OF AMICI

This amici curiae brief is submitted pursuant to Rule 37(4) of the Supreme Court Rules by the States of Minnesota, Iowa, Missouri and North Dakota and the Commonwealth of Puerto Rico in support of the Petition For Writ Of Certiorari filed by John Gale and Jon Bruning in their respective capacities of Secretary of State and Attorney General of the State of Nebraska.

The Eighth Circuit Court of Appeals held that Nebraska's prohibition of corporate farming (called "Initiative 300"), adopted in 1982 by Nebraska voters as part of the Nebraska Constitution, is unconstitutional under the dormant Commerce Clause. *Jones v. Gale*, 470 F.3d 1261 (8th Cir. 2006).

The Circuit Court's decision undercuts the principles of federalism by misapplying the Commerce Clause to negate the States' sovereign power to evenhandedly regulate local matters – corporate ownership and land use – to preserve family farms, rural economies, rural society, and the environment. The decision undoubtedly will be used to attack statutes of other states that similarly limit corporate farming.[1] More important, the decision is susceptible to broad application and thus imperils the power of the States to deal with serious economic, social and environmental problems generally. Finally, the decision below violates principles of federalism by unnecessarily striking down a provision of the Nebraska Constitution.

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[1] *See*, e.g., Iowa Code ch. 9H; Kan. Stat. Ann. § 17-5901 et seq.; Minn. Stat. § 500.24 (2006); Mo. Ann. Stat. § 350.015; N.D. Cent. Code § 10-06.1-02; Okla. Const. Art. XXII, § 2; P.R. Const. Art. VI, § 14; S.D. Codified Laws ch. 47-9A; Wis. Stat. Ann. § 182.001.

The amici curiae States urge this Court to review the decision below because it strikes at the very heart of our federal system.

SUMMARY OF ARGUMENT

The Circuit Court decision improperly applied the Commerce Clause to limit State control over local matters: corporate land ownership and use. In doing so, it failed to honor the principles of federalism, failed to respect the States' significant interest in regulating corporate land ownership and use, and imperiled the ability of the States to deal with serious economic, social and environmental problems.

The decision further disregarded federalism by unnecessary striking down a provision of a State constitution. The decision below judicially inserted a restriction into a provision of the Nebraska Constitution, determined that the inserted restriction made the provision unconstitutional, and then struck down the entire provision.

This case presents the important issues of federalism and the power of the States to meet economic, social and environmental crises. It should be considered by this Court.

ARGUMENT

I. Federalism's Balance Between The States And The Federal Government Is Fundamental.

"Just as the separation and independence of the coordinate branches of the Federal Government serve to

prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government [reduces] the risk of tyranny and abuse from either front." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). "This constitutionally mandated division of authority 'was adopted by the Framers to ensure protection of our fundamental liberties.'" *U.S. v. Lopez*, 514 U.S. 549, 552 (1995) (quoting *Gregory*, 501 U.S. at 458).

Among those things protected by this division of authority is the sovereign power of each State to govern itself. This Court long ago recognized that a State has an important interest in regulating land use and can do so for the general welfare of its citizens and communities. *See*, *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926) (State can zone land use for the public health, safety, morals, and general welfare of its citizens). It has also recognized the power of the States to regulate corporate activity within their borders. *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117 (1978) (State can prohibit petroleum producers and refiners from operating retail gas stations).

The decision of the Eighth Circuit directly and substantially infringes the fundamental right of the States to govern themselves and to govern the use of property and corporate activity within their borders. It is, therefore, critical that this Court hear this case.

II. Important, Nondiscriminatory State Interests Support State Laws Prohibiting Corporate Farming.

Agricultural states have a long history of regulating corporate farming. As early as 1945, this Court upheld the constitutionality of a North Dakota statute first enacted in 1932 that prohibited corporations from engaging in farming

and required them to dispose of any agricultural land they owned within ten years. *Asbury Hospital v. Cass County*, 326 U.S. 207 (1945) (equal protection and due process challenge to disposition requirement).

The concern with the takeover of family farms by corporations is well-founded. The effects of corporate farming include larger operations, indifferent absentee ownership, monopolistic power, and economic, social, and environmental degradation. *See* U.S. Dept. of Agric., Nat'l Comm'n on Small Farms, *A Time to Act: A Report of the USDA National Commission on Small Farms* (1998) at 9, 22 (hereinafter USDA Comm'n on Small Farms); Richard F. Prim, *Minnesota's Anti-corporate Farm Statute Revisited: Competing Visions in Agriculture, and the Legislature's Recent Attempt to Empower Minnesota Livestock Farmers*, 18 Hamline L. Rev. 431, 442 (1995). Studies have shown that independent family farms contribute significantly more towards a healthy rural economy than do corporate farms. *See* Rick Welsh and Thomas A. Lyson, *Agricultural Industrialization, Anti-Corporate Farming Laws, and Rural Community Welfare*, 37 Environment & Planning A 1479, 1489 (2005). In addition, research indicates that as the number of independent family farms declines, the quality of rural life declines, available community services decrease, and the number of schools, churches, and other primary social institutions are reduced. *See* James B. Wadley, *Small Farms: The USDA, Rural Communities, and Urban Pressures*, 21 Washburn L. J. 478, 497 (1982). Further, cultural amenities, independent business establishments, and self-employment opportunities also decline. *Id.* A comparison of a family farm community with an agribusiness town led one expert to conclude:

> Whether we focus on economic, social, or political factors, the traditional virtues of our society are

> better served in the family farm community than in the agribusiness town. Incomes were on the average higher though more people were supported; business enterprises were both more numerous and more profitable; there were more social amenities such as parks, paved streets, and sewers; there were more schools, clubs, and churches; there were more local newspapers and formal institutions for local political decision-making. The crucial difference is that in the family farm community, most of the population was self-employed; in the other, two-thirds were agricultural workers.

Family Farm Antitrust Act of 1979: Hearings on S. 334 Before the Subcomm. on Antitrust, Monopoly, and Business Rights of the Senate Comm. on the Judiciary, 96th Cong., 1st Sess. 68 (1979) (statement of Walter Goldschmidt), *cited in*, *id.* at 499-500.[2]

The foregoing is reiterated in more graphic detail by the United States Department of Agriculture Commission on Small Farms:

> "As farm size and absentee ownership increase, social conditions in the local community deteriorate. We have found depressed median family incomes, high levels of poverty, low education levels, social and economic inequality between

[2] Additionally, experience in states allowing large corporate farming operations demonstrates that states have reason to be concerned with adverse environmental harm associated with such operations, including waste spills and water pollution. *See* Jan Stout, *The Missouri Anti-Corporate Farming Act: Reconciling the Interests of the Independent Farmer and the Corporate Farm*, 64 UMKC L. REV. 835, 848-50 (1996) (discussing the environmental harm experienced in Missouri and North Carolina resulting from large corporate hog farming operations).

> ethnic groups, etc. . . . associated with land and capital concentration in agriculture. . . . Communities that are surrounded by farms that are larger than can be operated by a family unit have a bi-modal income distribution, with a few wealthy elites, a majority of poor laborers, and virtually no middle class. The absence of a middle class at the community level has a serious negative effect on both the quality and quantity of social and commercial service, public education, local governments, etc."
>
> Owner-operated farm structures offer individual self-employment and business management opportunities . . . . [They] are more likely to have a stake in the well-being of the community and the well-being of its citizens. In turn, local land owners are more likely to be held accountable for any negative actions that harm the community.

USDA Comm'n on Small Farms at 13 (quoting in part Dean MacCannel, *Agribusiness and the Small Community, Background Paper to Technology, Public Policy and the Changing Structure of American Agriculture*, Office of Technology Assessment, U.S. Congress, Washington DC 1983.)

It is because of this impact that agricultural States have enacted laws limiting, in various ways, the role of corporate farming within their borders. Such laws have been acknowledged to be within the States' regulatory power. *See*, e.g., *Hampton Feedlot Inc. v. Nixon*, 249 F.3d 814, 820 (8th Cir. 2001) ("The Missouri legislature has the authority to determine the course of its farming economy. . . ."); *State ex rel. Webster v. Lehndorff Geneva, Inc.*, 744 S.W.2d 801, 805 (Mo. 1988) ("It is within the province of the legislature to enact a statute which regulates the

balance of competitive economic forces in the field of agricultural production and commerce, thereby protecting the welfare of its citizens comprising the traditional farming community. . . ."). State anti-corporate farming laws have consistently withstood challenges under the Equal Protection Clause, based on findings that such laws are rationally related to a state's legitimate interest in preventing corporate domination of farmland at the expense of independent family farms. *See*, e.g., *Asbury Hosp.*, 326 U.S. at 214 ("We cannot say that there are no differences between corporations generally and those falling into the excepted classes which may appropriately receive recognition in the legislative application of a state policy against the concentration of farming lands in corporate ownership."); *MSM Farms, Inc. v. Spire*, 927 F.2d 330, 333 (8th Cir. 1991) (agreeing that a policy seeking to retain and promote family farm operations and avoid the threats of unrestricted corporate ownership of farmland by preventing the concentration of farmland in non-family corporations is a legitimate state interest under the equal protection clause); *Lehndorff Geneva, Inc.*, 744 S.W.2d at 806 ("The statute is rationally related to a legitimate state interest in that it prevents the aggregation of farmland in large corporations to the competitive exclusion of traditional farming entities.").

Moreover, Congress has expressly recognized the importance of preserving family farms and discouraging corporate farming. Codified in the Agriculture and Food Act is the congressional statement of policy supporting the maintenance of the family farm system of agriculture:

> Congress reaffirms the historical policy of the United States to foster and encourage the family farm system of agriculture in this country. Congress

> believes that the maintenance of the family farm system of agriculture is essential to the social well-being of the Nation and the competitive production of adequate supplies of food and fiber. *Congress further believes that any significant expansion of nonfamily owned large-scale corporate farming enterprises will be detrimental to the national welfare.*

7 U.S.C.A. § 2266(a) (1999) (emphasis added).

Limitations on corporate farming laws are not only supported by a long history of judicial and legislative recognition as to their legitimate purposes but also have had the effect of furthering those purposes. Specifically, the Welsh and Lyson study found that farming communities in states with anti-corporate farming laws have lower relative poverty levels, lower levels of unemployment, and higher percentages of farms reporting cash gains, than do farming communities in states without such laws. Welsh and Lyson, *supra*, at 1489.

States must continue to have the ability to limit corporate farming so that their rural areas do not become a society of corporate oligarchs and poor farm laborers.

III. The Circuit Court's Commerce Clause Analysis Failed To Properly Apply This Court's Controlling Precedent.

The Commerce Clause, although phrased as an affirmative grant of regulatory power to Congress, "has long been understood to have a 'negative' aspect that denies States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce." *Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality*,

511 U.S. 93, 98 (1994). The analysis to determine whether a state law violates this negative aspect of the Commerce Clause is well established. The first step is to determine whether the challenged law "'regulates evenhandedly with only "incidental" effects on interstate commerce, or discriminates against interstate commerce.'" *Id.* 511 U.S. at 99 (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979)). A nondiscriminatory law that has only incidental effects on interstate commerce is subject to a balancing test and will be upheld unless "'the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.'" *Id.* (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970)). If the law discriminates against interstate commerce, the law is subject to more rigorous scrutiny and will be sustained only if it "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Granholm v. Heald*, 544 U.S. 460, 489 (2005) (quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 278 (1988)).

While the foregoing dichotomy is simply stated, "there is no clear line separating these categories. 'In either situation the critical consideration is the *overall* effect of the statute on *both local* and interstate activity.'" *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 402 (1994) (quoting *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 579 (1986)) (emphasis added). Such critical consideration of both aspects of the law mitigates against usurpation by the federal courts of both the Congressional power to regulate commerce and the powers reserved to the States under our federal system and as expressed by the Tenth Amendment.

In this case, the Court of Appeals concluded that Nebraska's prohibition of corporate farming ("Initiative 300") discriminates against interstate commerce and held it '*per se* invalid' unless the [State] 'can demonstrate, under rigorous scrutiny, that [it has] no other means to advance a legitimate local interest.'" *Jones*, 470 F.3d at 1270. While the *amici curiae* States do not agree that the statute discriminates against interstate commerce or that rigorous scrutiny applies, this section addresses the Court of Appeal's failure to properly apply the rigorous scrutiny test set forth in this Court's controlling precedent.

In applying rigorous scrutiny, the Court of Appeals dismissed the significant land ownership, agricultural, and societal problems that Initiative 300 addresses and that are discussed in Part II of this brief. The Court of Appeals stated that it appeared that Nebraska was "attempting to obfuscate the issue by using such a vague definition of these 'negative effects' that the definition itself is what prevents us [the Court] from suggesting concrete alternative measures." *Id.* 470 F.3d at 1270. By thus dismissing the significant state interests in preventing the negative impacts of corporate farming, the Court of Appeals failed to consider "the *overall* effect of the statute on *both* local and interstate activity" which is the "critical consideration" under either rigorous scrutiny test or the balancing test. *C & A Carbone*, 511 U.S. at 402 (quoting *Brown-Forman Distillers Corp.* 476 U.S. at 579) (emphasis added). Further, having improperly dismissed the State interests, the court failed to consider that no other means addressed these important interests. The Court of Appeals thus failed to properly apply this Court's controlling precedent.

The failure of the Court of Appeals to properly apply the controlling precedent caused the court to incorrectly conclude that the Nebraska Constitution violates the dormant Commerce Clause and to improperly intrude upon an area reserved to the States.

IV. The Circuit Court's Interpretation And Invalidation Of The Nebraska Constitution Itself Violated Principles Of Federalism.

The Circuit Court's interpretation and invalidation of Nebraska's Constitution itself violated principles of federalism. The Circuit Court inserted a requirement in the Nebraska Constitution, and then, based upon the invalidity of the inserted restriction, struck down the entire constitutional provision. This violated two precepts of this Court and principles of federalism.

The Circuit Court inserted into Nebraska's Constitution the requirement that a family farm corporation shareholder must occupy *Nebraska* farmland to be excepted from the corporate farming prohibition. *Jones*, 470 F.3d at 1267-68. It did so based largely upon the legislative history of the provision, even though Nebraska's Constitution contains no such requirement and is facially neutral.

In doing this, the Circuit Court improperly disregarded the principle that if one construction of a statute would raise serious constitutional problems, while an alternative construction that does not is "fairly possible," the courts are obligated to construe the statute to avoid the constitutional problem. *I.N.S. v. St. Cyr*, 533 U.S. 289, 299-300 (2001) (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932)). While this rule was stated in the context of judicial respect for a co-equal branch of government, principles of

federalism require no less when federal courts construe state law.

Second, the Circuit Court did not merely declare its own insertion invalid, but rather invalidated the entire Nebraska provision based upon the invalidity of the requirement that the Circuit Court inserted. In doing so the Circuit Court improperly disregarded the rule that when a state law is challenged on the basis of federal law, "state law is displaced only 'to the extent that it actually conflicts with federal law.'" *Dalton v. Little Rock Family Planning Serv.*, 516 U.S. 474, 476 (1996) (quoting *Pacific Gas & Elec. Co. v. State Energy Res. Conserv. and Dev. Comm'n*, 461 U.S. 190, 204 (1983)).

The Circuit Court's analysis is contrary to the precedents of this Court and the principles of federalism that those precedents preserve.

V. The Decision Below Improperly And Severely Limits The Ability Of The States To Regulate For the Public Health, Safety And Welfare.

The Circuit Court has determined that the dormant Commerce Clause invalidates state law without regard for the significant state interests furthered by that state law. Further, the Circuit Court adopted a method of statutory and constitutional analysis that resulted in the unnecessary invalidation of state law. These erroneous determinations are susceptible to broad application that will improperly and severely limit the ability of the States to regulate land use and corporate activity for the public health, safety and general welfare.

CONCLUSION

The decision of the Court of Appeals in this case failed to properly apply established dormant Commerce Clause jurisprudence and thus deprived the States of their sovereign power to govern land use and corporations within their own borders for the public good. Further, by disregarding rules of construction and restraint, the decision unnecessarily invalidated a state constitutional provision. The petition for writ of certiorari should be granted to consider these important issues of federalism.

Dated: February 28, 2007

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

THOMAS K. OVERTON
Assistant Attorney General
Atty. Reg. No. 0083355

445 Minnesota Street,
Suite 900
St. Paul, MN 55101-2127
(651) 296-0985

Attorneys for Amici

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500.24 FARMING BY BUSINESS ORGANIZATIONS.

Subdivision 1. **Purpose.** The legislature finds that it is in the interests of the state to encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family.

Subd. 2. **Definitions.** The definitions in this subdivision apply to this section.

(a) "Farming" means the production of (1) agricultural products; (2) livestock or livestock products; (3) milk or milk products; or (4) fruit or other horticultural products. It does not include the processing, refining, or packaging of said products, nor the provision of spraying or harvesting services by a processor or distributor of farm products. It does not include the production of timber or forest products, the production of poultry or poultry products, or the feeding and caring for livestock that are delivered to a corporation for slaughter or processing for up to 20 days before slaughter or processing.

(b) "Family farm" means an unincorporated farming unit owned by one or more persons residing on the farm or actively engaging in farming.

(c) "Family farm corporation" means a corporation founded for the purpose of farming and the ownership of agricultural land in which the majority of the stock is held by and the majority of the stockholders are persons, the spouses of persons, or current beneficiaries of one or more family farm trusts in which the trustee holds stock in a family farm corporation, related to each other within the

third degree of kindred according to the rules of the civil law, and at least one of the related persons is residing on or actively operating the farm, and none of whose stockholders are corporations; provided that a family farm corporation shall not cease to qualify as such hereunder by reason of any:

(1) transfer of shares of stock to a person or the spouse of a person related within the third degree of kindred according to the rules of civil law to the person making the transfer, or to a family farm trust of which the shareholder, spouse, or related person is a current beneficiary; or

(2) distribution from a family farm trust of shares of stock to a beneficiary related within the third degree of kindred according to the rules of civil law to a majority of the current beneficiaries of the trust, or to a family farm trust of which the shareholder, spouse, or related person is a current beneficiary.

For the purposes of this section, a transfer may be made with or without consideration, either directly or indirectly, during life or at death, whether or not in trust, of the shares in the family farm corporation, and stock owned by a family farm trust are considered to be owned in equal shares by the current beneficiaries.

(d) "Family farm trust" means:

(1) a trust in which:

(i) a majority of the current beneficiaries are persons or spouses of persons who are related to each other within the third degree of kindred according to the rules of civil law;

(ii) all of the current beneficiaries are natural persons or nonprofit corporations or trusts described in the Internal Revenue Code, section 170(c), as amended, and the regulations under that section; and

(iii) one of the family member current beneficiaries is residing on or actively operating the farm; or the trust leases the agricultural land to a family farm unit, a family farm corporation, an authorized farm corporation, an authorized livestock farm corporation, a family farm limited liability company, a family farm trust, an authorized farm limited liability company, a family farm partnership, or an authorized farm partnership; or

(2) a charitable remainder trust as defined in the Internal Revenue Code, section 664, as amended, and the regulations under that section, and a charitable lead trust as set forth in the Internal Revenue Code, section 170(f), and the regulations under that section.

(e) "Authorized farm corporation" means a corporation meeting the following standards:

(1) it has no more than five shareholders, provided that for the purposes of this section, a husband and wife are considered one shareholder;

(2) all its shareholders, other than any estate, are natural persons or a family farm trust;

(3) it does not have more than one class of shares;

(4) its revenue from rent, royalties, dividends, interest, and annuities does not exceed 20 percent of its gross receipts;

(5) shareholders holding 51 percent or more of the interest in the corporation reside on the farm or are actively engaging in farming;

(6) it does not, directly or indirectly, own or otherwise have an interest in any title to more than 1,500 acres of agricultural land; and

(7) none of its shareholders are shareholders in other authorized farm corporations that directly or indirectly in combination with the corporation own more than 1,500 acres of agricultural land.

(f) "Authorized livestock farm corporation" means a corporation formed for the production of livestock and meeting the following standards:

(1) it is engaged in the production of livestock other than dairy cattle;

(2) all its shareholders, other than any estate, are natural persons, family farm trusts, or family farm corporations;

(3) it does not have more than one class of shares;

(4) its revenue from rent, royalties, dividends, interest, and annuities does not exceed 20 percent of its gross receipts;

(5) shareholders holding 75 percent or more of the control, financial, and capital investment in the corporation are farmers, and at least 51 percent of the required percentage of farmers are actively engaged in livestock production;

(6) it does not, directly or indirectly, own or otherwise have an interest in any title to more than 1,500 acres of agricultural land; and

(7) none of its shareholders are shareholders in other authorized farm corporations that directly or indirectly in combination with the corporation own more than 1,500 acres of agricultural land.

(g) "Agricultural land" means real estate used for farming or capable of being used for farming in this state.

(h) "Pension or investment fund" means a pension or employee welfare benefit fund, however organized, a mutual fund, a life insurance company separate account, a common trust of a bank or other trustee established for the investment and reinvestment of money contributed to it, a real estate investment trust, or an investment company as defined in United States Code, title 15, section 80a-3.

(i) "Farm homestead" means a house including adjoining buildings that has been used as part of a farming operation or is part of the agricultural land used for a farming operation.

(j) "Family farm partnership" means a limited partnership formed for the purpose of farming and the ownership of agricultural land in which the majority of the interests in the partnership is held by and the majority of the partners are natural persons or current beneficiaries of one or more family farm trusts in which the trustee holds an interest in a family farm partnership related to each other within the third degree of kindred according to the rules of the civil law, and at least one of the related persons is residing on the farm, actively operating the farm,

or the agricultural land was owned by one or more of the related persons for a period of five years before its transfer to the limited partnership, and none of the partners is a corporation. A family farm partnership does not cease to qualify as a family farm partnership because of a:

(1) transfer of a partnership interest to a person or spouse of a person related within the third degree of kindred according to the rules of civil law to the person making the transfer or to a family farm trust of which the partner, spouse, or related person is a current beneficiary; or

(2) distribution from a family farm trust of a partnership interest to a beneficiary related within the third degree of kindred according to the rules of civil law to a majority of the current beneficiaries of the trust, or to a family farm trust of which the partner, spouse, or related person is a current beneficiary.

For the purposes of this section, a transfer may be made with or without consideration, either directly or indirectly, during life or at death, whether or not in trust, of a partnership interest in the family farm partnership, and interest owned by a family farm trust is considered to be owned in equal shares by the current beneficiaries.

(k) "Authorized farm partnership" means a limited partnership meeting the following standards:

(1) it has been issued a certificate from the secretary of state or is registered with the county recorder and farming and ownership of agricultural land is stated as a purpose or character of the business;

(2) it has no more than five partners;

(3) all its partners, other than any estate, are natural persons or family farm trusts;

(4) its revenue from rent, royalties, dividends, interest, and annuities does not exceed 20 percent of its gross receipts;

(5) its general partners hold at least 51 percent of the interest in the land assets of the partnership and reside on the farm or are actively engaging in farming not more than 1,500 acres as a general partner in an authorized limited partnership;

(6) its limited partners do not participate in the business of the limited partnership including operating, managing, or directing management of farming operations;

(7) it does not, directly or indirectly, own or otherwise have an interest in any title to more than 1,500 acres of agricultural land; and

(8) none of its limited partners are limited partners in other authorized farm partnerships that directly or indirectly in combination with the partnership own more than 1,500 acres of agricultural land.

(l) "Family farm limited liability company" means a limited liability company founded for the purpose of farming and the ownership of agricultural land in which the majority of the membership interests is held by and the majority of the members are natural persons, or current beneficiaries of one or more family farm trusts in which the trustee holds an interest in a family farm limited liability company related to each other within the third degree of kindred according to the rules of the civil law, and at least one of the related persons is residing on the farm, actively operating the farm, or the agricultural

land was owned by one or more of the related persons for a period of five years before its transfer to the limited liability company, and none of the members is a corporation or a limited liability company. A family farm limited liability company does not cease to qualify as a family farm limited liability company because of:

(1) a transfer of a membership interest to a person or spouse of a person related within the third degree of kindred according to the rules of civil law to the person making the transfer or to a family farm trust of which the member, spouse, or related person is a current beneficiary; or

(2) distribution from a family farm trust of a membership interest to a beneficiary related within the third degree of kindred according to the rules of civil law to a majority of the current beneficiaries of the trust, or to a family farm trust of which the member, spouse, or related person is a current beneficiary.

For the purposes of this section, a transfer may be made with or without consideration, either directly or indirectly, during life or at death, whether or not in trust, of a membership interest in the family farm limited liability company, and interest owned by a family farm trust is considered to be owned in equal shares by the current beneficiaries. Except for a state or federally chartered financial institution acquiring an encumbrance for the purpose of security or an interest under paragraph (x), a member of a family farm limited liability company may not transfer a membership interest, including a financial interest, to a person who is not otherwise eligible to be a member under this paragraph.

(m) "Authorized farm limited liability company" means a limited liability company meeting the following standards:

(1) it has no more than five members;

(2) all its members, other than any estate, are natural persons or family farm trusts;

(3) it does not have more than one class of membership interests;

(4) its revenue from rent, royalties, dividends, interest, and annuities does not exceed 20 percent of its gross receipts;

(5) members holding 51 percent or more of both the governance rights and financial rights in the limited liability company reside on the farm or are actively engaged in farming;

(6) it does not, directly or indirectly, own or otherwise have an interest in any title to more than 1,500 acres of agricultural land; and

(7) none of its members are members in other authorized farm limited liability companies that directly or indirectly in combination with the authorized farm limited liability company own more than 1,500 acres of agricultural land.

Except for a state or federally chartered financial institution acquiring an encumbrance for the purpose of security or an interest under paragraph (x), a member of an authorized farm limited liability company may not transfer a membership interest, including a financial interest, to a person who is not otherwise eligible to be a member under this paragraph.

(n) "Farmer" means a natural person who regularly participates in physical labor or operations management in the person's farming operation and files "Schedule F" as part of the person's annual Form 1040 filing with the United States Internal Revenue Service.

(o) "Actively engaged in livestock production" means performing day-to-day physical labor or day-to-day operations management that significantly contributes to livestock production and the functioning of a livestock operation.

(p) "Research or experimental farm" means a corporation, limited partnership, pension, investment fund, or limited liability company that owns or operates agricultural land for research or experimental purposes, provided that any commercial sales from the operation are incidental to the research or experimental objectives of the corporation. A corporation, limited partnership, limited liability company, or pension or investment fund seeking initial approval by the commissioner to operate agricultural land for research or experimental purposes must first submit to the commissioner a prospectus or proposal of the intended method of operation containing information required by the commissioner including a copy of any operational contract with individual participants.

(q) "Breeding stock farm" means a corporation, limited partnership, or limited liability company, that owns or operates agricultural land for the purpose of raising breeding stock, including embryos, for resale to farmers or for the purpose of growing seed, wild rice, nursery plants, or sod. An entity that is organized to raise livestock other than dairy cattle under this paragraph that does not qualify as an authorized farm corporation must:

(1) sell all castrated animals to be fed out or finished to farming operations that are neither directly nor indirectly owned by the business entity operating the breeding stock operation; and

(2) report its total production and sales annually to the commissioner.

(r) "Aquatic farm" means a corporation, limited partnership, or limited liability company, that owns or leases agricultural land as a necessary part of an aquatic farm as defined in section 17.47, subdivision 3.

(s) "Religious farm" means a corporation formed primarily for religious purposes whose sole income is derived from agriculture.

(t) "Utility corporation" means a corporation regulated under Minnesota Statutes 1974, chapter 216B, that owns agricultural land for purposes described in that chapter, or an electric generation or transmission cooperative that owns agricultural land for use in its business if the land is not used for farming except under lease to a family farm unit, a family farm corporation, a family farm trust, a family farm partnership, or a family farm limited liability company.

(u) "Development organization" means a corporation, limited partnership, limited liability company, or pension or investment fund that has an interest in agricultural land for which the corporation, limited partnership, limited liability company, or pension or investment fund has documented plans to use and subsequently uses the land within six years from the date of purchase for a specific nonfarming purpose, or if the land is zoned nonagricultural, or if the land is located within an incorporated

area. A corporation, limited partnership, limited liability company, or pension or investment fund may hold agricultural land in the amount necessary for its nonfarm business operation; provided, however, that pending the development of agricultural land for nonfarm purposes, the land may not be used for farming except under lease to a family farm unit, a family farm corporation, a family farm trust, an authorized farm corporation, an authorized livestock farm corporation, a family farm partnership, an authorized farm partnership, a family farm limited liability company, or an authorized farm limited liability company, or except when controlled through ownership, options, leaseholds, or other agreements by a corporation that has entered into an agreement with the United States under the New Community Act of 1968 (Title IV of the Housing and Urban Development Act of 1968, United States Code, title 42, sections 3901 to 3914) as amended, or a subsidiary or assign of such a corporation.

(v) "Exempt land" means agricultural land owned or leased by a corporation as of May 20, 1973, agricultural land owned or leased by a pension or investment fund as of May 12, 1981, agricultural land owned or leased by a limited partnership as of May 1, 1988, or agricultural land owned or leased by a trust as of the effective date of Laws 2000, chapter 477, including the normal expansion of that ownership at a rate not to exceed 20 percent of the amount of land owned as of May 20, 1973, for a corporation; May 12, 1981, for a pension or investment fund; May 1, 1988, for a limited partnership, or the effective date of Laws 2000, chapter 477, for a trust, measured in acres, in any five-year period, and including additional ownership reasonably necessary to meet the requirements of pollution control rules. A corporation, limited partnership, or

pension or investment fund that is eligible to own or lease agricultural land under this section prior to May 1997, or a corporation that is eligible to own or lease agricultural land as a benevolent trust under this section prior to the effective date of Laws 2000, chapter 477, may continue to own or lease agricultural land subject to the same conditions and limitations as previously allowed.

(w) "Gifted land" means agricultural land acquired as a gift, either by grant or devise, by an educational, religious, or charitable nonprofit corporation, limited partnership, limited liability company, or pension or investment fund if all land so acquired is disposed of within ten years after acquiring the title.

(x) "Repossessed land" means agricultural land acquired by a corporation, limited partnership, limited liability company, or pension or investment fund by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim on the land, whether created by mortgage or otherwise if all land so acquired is disposed of within five years after acquiring the title. The five-year limitation is a covenant running with the title to the land against any grantee, assignee, or successor of the pension or investment fund, corporation, limited partnership, or limited liability company. The land so acquired must not be used for farming during the five-year period, except under a lease to a family farm unit, a family farm corporation, a family farm trust, an authorized farm corporation, an authorized livestock farm corporation, a family farm partnership, an authorized farm partnership, a family farm limited liability company, or an authorized farm limited liability company. Notwithstanding the five-year divestiture requirement under this paragraph, a financial institution may continue to own the agricultural

land if the agricultural land is leased to the immediately preceding former owner, but must dispose of the agricultural land within ten years of acquiring the title. Livestock acquired by a pension or investment fund, corporation, limited partnership, or limited liability company in the collection of debts, or by a procedure for the enforcement of lien or claim on the livestock whether created by security agreement or otherwise after August 1, 1994, must be sold or disposed of within one full production cycle for the type of livestock acquired or 18 months after the livestock is acquired, whichever is earlier.

(y) "Commissioner" means the commissioner of agriculture.

(z) "Nonprofit corporation" means a nonprofit corporation organized under state nonprofit corporation or trust law or qualified for tax-exempt status under federal tax law that uses the land for a specific nonfarming purpose or leases the agricultural land to a family farm unit, a family farm corporation, an authorized farm corporation, an authorized livestock farm corporation, a family farm limited liability company, a family farm trust, an authorized farm limited liability company, a family farm partnership, or an authorized farm partnership.

(aa) "Current beneficiary" means a person who at any time during a year is entitled to, or at the discretion of any person may, receive a distribution from the income or principal of the trust. It does not include a distributee trust, other than a trust described in section 170(c) of the Internal Revenue Code, as amended, but does include the current beneficiaries of the distributee trust. It does not include a person in whose favor a power of appointment could be exercised until the holder of the power of

appointment actually exercises the power of appointment in that person's favor. It does not include a person who is entitled to receive a distribution only after a specified time or upon the occurrence of a specified event until the time or occurrence of the event. For the purposes of this section, a distributee trust is a current beneficiary of a family farm trust.

(bb) "De minimis" means that any corporation, pension or investment fund, limited liability company, or limited partnership that directly or indirectly owns, acquires, or otherwise obtains any interest in 40 acres or less of agricultural land and annually receives less than $150 per acre in gross revenue from rental or agricultural production.

Subd. 3. **Farming and ownership of agricultural land by corporations restricted.**

(a) No corporation, limited liability company, pension or investment fund, trust, or limited partnership shall engage in farming; nor shall any corporation, limited liability company, pension or investment fund, trust, or limited partnership, directly or indirectly, own, acquire, or otherwise obtain any interest, in agricultural land other than a bona fide encumbrance taken for purposes of security. This subdivision does not apply to general partnerships. This subdivision does not apply to any agricultural land, corporation, limited partnership, trust, limited liability company, or pension or investment fund that meet any of the definitions in subdivision 2, paragraphs (b) to (f), (j) to (m), (p) to (x), (z), and (bb), has a conservation plan prepared for the agricultural land, and reports as required under subdivision 4.

(b) A corporation, pension or investment fund, trust, limited liability company, or limited partnership that cannot meet any of the definitions in subdivision 2, paragraphs (b) to (f), (j) to (m), (p) to (x), (z), and (bb), may petition the commissioner for an exemption from this subdivision. The commissioner may issue an exemption if the entity meets the following criteria:

(1) the exemption would not contradict the purpose of this section; and

(2) the petitioning entity would not have a significant impact upon the agriculture industry and the economy.

The commissioner shall review annually each entity that is issued an exemption under this paragraph to ensure that the entity continues to meet the criteria in clauses (1) and (2). If an entity fails to meet the criteria, the commissioner shall withdraw the exemption and the entity is subject to enforcement proceedings under subdivision 5. The commissioner shall submit a report with a list of each entity that is issued an exemption under this paragraph to the chairs of the senate and house agricultural policy committees by October 1 of each year.

Subd. 3a. **Lease agreement; conservation practice protection clause.** A corporation, pension or investment fund, limited partnership, or limited liability company other than those meeting any of the definitions in subdivision 2, paragraphs (c) to (f) or (j) to (m), when leasing farm land to a family farm unit, a family farm corporation, a family farm trust, an authorized farm corporation, an authorized livestock farm corporation, a family farm partnership, an authorized farm partnership, a family farm limited liability company, or an authorized farm limited liability company, under provisions of subdi-

vision 2, paragraph (x), must include within the lease agreement a provision prohibiting intentional damage or destruction to a conservation practice on the agricultural land.

Subd. 3b. **Protection of conservation practices.** A corporation, pension or investment fund, or limited partnership, or limited liability company other than those meeting any of the definitions in subdivision 2, paragraphs (c) to (f) or (j) to (m), which, during the period of time it holds agricultural land under subdivision 2, paragraph (x), intentionally destroys a conservation practice as defined in section 103F.401, subdivision 3, to which the state has made a financial contribution, must pay the commissioner, for deposit in the general fund, an amount equal to the state's total contributions to that conservation practice plus interest from the time of investment in the conservation practice. Interest must be calculated at an annual percentage rate of 12 percent.

Subd. 4. **Reports.** (a) The chief executive officer of every pension or investment fund, corporation, limited partnership, limited liability company, or entity that is seeking to qualify for an exemption from the commissioner, and the trustee of a family farm trust that holds any interest in agricultural land or land used for the breeding, feeding, pasturing, growing, or raising of livestock, dairy or poultry, or products thereof, or land used for the production of agricultural crops or fruit or other horticultural products, other than a bona fide encumbrance taken for purposes of security, or which is engaged in farming or proposing to commence farming in this state after May 20, 1973, shall file with the commissioner a report containing the following information and documents:

(1) the name of the pension or investment fund, corporation, limited partnership, or limited liability company and its place of incorporation, certification, or registration;

(2) the address of the pension or investment plan headquarters or of the registered office of the corporation in this state, the name and address of its registered agent in this state and, in the case of a foreign corporation, limited partnership, or limited liability company, the address of its principal office in its place of incorporation, certification, or registration;

(3) the acreage and location listed by quarter-quarter section, township, and county of each lot or parcel of agricultural land or land used for the keeping or feeding of poultry in this state owned or leased by the pension or investment fund, limited partnership, corporation, or limited liability company;

(4) the names and addresses of the officers, administrators, directors, or trustees of the pension or investment fund, or of the officers, shareholders owning more than ten percent of the stock, including the percent of stock owned by each such shareholder, the members of the board of directors of the corporation, and the members of the limited liability company, and the general and limited partners and the percentage of interest in the partnership by each partner;

(5) the farm products which the pension or investment fund, limited partnership, corporation, or limited liability company produces or intends to produce on its agricultural land;

(6) with the first report, a copy of the title to the property where the farming operations are or will occur indicating the particular exception claimed under subdivision 3; and

(7) with the first or second report, a copy of the conservation plan proposed by the soil and water conservation district, and with subsequent reports a statement of whether the conservation plan was implemented.

The report of a corporation, trust, limited liability company, or partnership seeking to qualify hereunder as a family farm corporation, an authorized farm corporation, an authorized livestock farm corporation, a family farm partnership, an authorized farm partnership, a family farm limited liability company, an authorized farm limited liability company, or a family farm trust or under an exemption from the commissioner shall contain the following additional information: the number of shares, partnership interests, or governance and financial rights owned by persons or current beneficiaries of a family farm trust residing on the farm or actively engaged in farming, or their relatives within the third degree of kindred according to the rules of the civil law or their spouses; the name, address, and number of shares owned by each shareholder, partnership interests owned by each partner or governance and financial rights owned by each member, and a statement as to percentage of gross receipts of the corporation derived from rent, royalties, dividends, interest, and annuities. No pension or investment fund, limited partnership, corporation, or limited liability company shall commence farming in this state until the commissioner has inspected the report and certified that its proposed operations comply with the provisions of this section.

(b) Every pension or investment fund, limited partnership, trust, corporation, or limited liability company as described in paragraph (a) shall, prior to April 15 of each year, file with the commissioner a report containing the information required in paragraph (a), based on its operations in the preceding calendar year and its status at the end of the year. A pension or investment fund, limited partnership, corporation, or limited liability company that does not file the report by April 15 must pay a $500 civil penalty. The penalty is a lien on the land being farmed under subdivision 3 until the penalty is paid.

(c) The commissioner may, for good cause shown, issue a written waiver or reduction of the civil penalty for failure to make a timely filing of the annual report required by this subdivision. The waiver or reduction is final and conclusive with respect to the civil penalty, and may not be reopened or modified by an officer, employee, or agent of the state, except upon a showing of fraud or malfeasance or misrepresentation of a material fact. The report required under paragraph (b) must be completed prior to a reduction or waiver under this paragraph. The commissioner may enter into an agreement under this paragraph only once for each corporation or partnership.

(d) Failure to file a required report or the willful filing of false information is a gross misdemeanor.

Subd. 5. **Enforcement.** With reason to believe that a corporation, limited partnership, limited liability company, trust, or pension or investment fund is violating subdivision 3, the attorney general shall commence an action in the district court in which any agricultural lands relative to such violation are situated, or if situated in two or more counties, in any county in which a substantial part of the

lands are situated. The attorney general shall file for record with the county recorder or the registrar of titles of each county in which any portion of said lands are located a notice of the pendency of the action as provided in section 557.02. If the court finds that the lands in question are being held in violation of subdivision 3, it shall enter an order so declaring. The attorney general shall file for record any such order with the county recorder or the registrar of titles of each county in which any portion of said lands are located. Thereafter, the pension or investment fund, limited partnership, or corporation owning such land shall have a period of five years from the date of such order to divest itself of such lands. The aforementioned five-year limitation period shall be deemed a covenant running with the title to the land against any pension or investment fund, limited partnership, or corporate grantee or assignee or the successor of such pension or investment fund, limited partnership, or corporation. Any lands not so divested within the time prescribed shall be sold at public sale in the manner prescribed by law for the foreclosure of a mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law.

Subd. 6. [Renumbered 500.245, subdivision 1]

Subd. 7. [Renumbered 500.245, subdivision 2]

Subd. 8. [Renumbered 500.245, subdivision 3]